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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GUARIELLO, JOHN J

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/11/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/951407	Applicant(s)	Fridervick et al.
Examiner	John Guanciale	Group Art Unit	1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on _____

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-34 is/are pending in the application.

Of the above claim(s) 17-25 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-16, 26-34 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4,5 Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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DETAILED ACTION

Election/Restriction

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-16, 26-34, drawn to laminate, classified in class 428, subclass 192.
- II. Claims 17-25, drawn to method of making elastic laminate, classified in class 156, subclass 297.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as the continuous filament spunbond laminate process.

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18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

20. During a telephone conversation with Eric T. Krischke on 7/3,9?2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16, 26-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

21. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

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amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 1-16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mleziva et al. 6,057,024.

Mleziva describes a composite elastic material corresponding to the instantly claimed stretch edge laminate with a layer of ribbon shaped (like a plurality of elastic filaments) elastomeric elements disposed in the machine direction bonded to an extensible layer which corresponds to the instantly claimed elastic filaments forming an elastic laminate zone, (see abstract; column 2, lines 65-67). Mleziva describes the composites of elastic and nonelastic materials can be used in pads, diapers, and personal care products

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where elasticity maybe desired, (column 1, lines 10-15). Mleziva describes the extensible layer can be stretchable which corresponds to the instantly claimed stretch edge (column 2, lines 13-38). Mleziva describes the meaning of the terms elastic, non-elastic, machine direction, and other conventional terms, (column 3, lines 6-59; column 4, lines 1-65). Mleziva describes the entire composite to stretch or elongate and can be used in garment materials, pads, diapers, and personal care products, (column 1, lines 10-15) which allows the composite to stretch or elongate. Mleziva describes the layers can be extensible and can be several non-woven materials, (column 8, lines 1-11, 25-65). Mleziva differs from the claimed invention because it is silent about the term **stretch edge**, which is an elastic film and facing layer at one or both edges as defined in the instant specification page 3, lines 9 and 10; and the terms **gasket or elastic zones** as defined in the instant specification page 3, lines 4-7, which is the stretch edge aligned in the machine direction.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first elastic zones or first extensible

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layers and the second extensible layer corresponding to the elastic film, of Mleziva motivated with the expectation that adjustments, (column 9, lines 56-67) are routine in this art as noted by Mleziva, (column 7, lines 45-67).

24. Claims 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clear et al. 5,690,627.

Clear describes absorbent articles (corresponding to a disposable garment, diaper), (see abstract, column 1, lines 16-21). Clear describes disposable diapers with elastically fit panels and elastic waist features that provide improved fit, (column 2, lines 41-45). Clear describes the absorbent article has fit panels elastically extensible in at least the longitudinal direction, (column 2, lines 53-55). Clear describes a fit panel extends longitudinally outward from at least one end edge of the containment assembly and joins with the waist feature, (column 2, lines 55-67). Clear describes the containment assembly with a liquid pervious topsheet like the instantly claimed first facing material, a liquid impervious backsheet like the instantly claimed second facing material, and an absorbent core like the instantly

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claimed elastomeric layer of filaments, and elasticized leg cuffs corresponding to the lateral edges of the stretch edge laminate, (column 2, lines 58-68; column 3, lines 30). Clear differs from the claimed invention because it is silent about the terms stretch edge laminate, first facing material, second facing material, and lateral edges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent article of Clear motivated with the expectation that the instantly claimed garment is a diaper which Clear describes, and as cited above with the appropriate similar language of likeness. But Clear uses different terms to explain the components of the instantly claimed disposable garment which one of ordinary skill would recognize as similar to diapers as noted in Column 1, lines 15-20).

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

August 19, 2002

August 30, 2002

September 9, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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